IN THE CLAIMS

STATUS OF THE CLAIMS

The following claims are pending in this application.

1. (Currently Amended) A self-sealing, molded plastic closure assembly for application to a container for a pressurized or gas-sensitive product, said assembly comprising a closure, said closure comprising:

a top panel that is adapted to ~~expand~~ span an opening of the container;

an annular skirt depending from the top panel [an] and being adapted to secure the closure assembly to a finish of the container; and

an annular sealing fin extending inwardly and downwardly from an interior of the closure and being formed ~~integrally with the top panel and being formed~~ integrally with the top panel and the annular wall of the closure, the sealing fin being adapted to engage a rim of a container to be folded into sealing engagement with the rim and a side of ~~the~~ a finish of the container when the closure assembly is secured to the container;

said closure assembly further comprising:

a barrier disc positioned beneath an underside of the top panel of the

closure and adapted to be out of sealing engagement with the rim of the container, the barrier disc being adapted to be retained within the closure assembly against the underside of the top panel by a folded back free end of the sealing fin when the sealing fin is in sealing engagement with the rim of the container.

2. (Original) A closure assembly according to claim 1 wherein the barrier disc is molded or fabricated from a polymeric material whose primary ingredient is selected from the group consisting of EVOH and LCP.

3. (Original) A closure assembly according to claim 2 wherein the primary material also includes an oxygen-scavenging material embedded therein.

4. (Currently Amended) A closure assembly according to claim 1, wherein the closure is molded in a single piece from a material whose primary ingredient is selected from the group consisting of high density polyethylene, polypropylene, low density polyethylene, and co-polymers of polyethylene and polypropylene.

5. (Original) A closure assembly according to claim 1 wherein the closure is adapted to be applied to a container by providing the annular skirt of the closure with an inwardly projecting and helically extending continuous or interrupted thread.

6. (Currently Amended) A package comprising:

a container, said container having a finish with an annular rim;

a closure assembly applied to the container, the closure assembly comprising a closure, the closure comprising:

a top panel that spans an opening of the container,

an annular skirt depending from the top panel and serving to secure the closure assembly to the finish of the container, and

an annular sealing fin having an inner portion that engages the rim of the container and a terminal portion of a side of the finish of the container, the sealing fin being formed integrally with the top panel and the annular wall of the closure;

said closure assembly further comprising:

a barrier disc positioned in engagement with an inwardly facing side of the top panel of the closure and out of sealing engagement with the rim of the container, the barrier disc being contained within the closure assembly, when the closure assembly is in sealing engagement with the container, by a folded back free end of the sealing fin.

7. (Original) A package according to claim 6 wherein:

the barrier disc of the closure assembly is molded or fabricated from a polymeric material whose primary ingredient is selected from the group consisting of EVOH and LCP.

8. (Currently Amended) A package according to claim 6 wherein the primary material of the barrier disc of the closure assembly also includes an oxygen-scavenging material embedded therein.

9. (Original) A package according to claim 6 wherein the closure is molded in a single piece from a material whose primary ingredient is selected from the group consisting of high density polyethylene, polypropylene and low density polyethylene, and co-polymers of polyethylene and polypropylene.

10. (Currently Amended) A package according to claim 6 wherein:

the closure is applied to the container by providing the annular skirt of the closure with an inwardly projecting and helically extending continuous or interrupted thread, and by providing the finish of the container with an ~~upwardly~~ outwardly projecting and helically extending continuous or interrupted thread.

11. (New) A closure assembly according to claim 1 wherein:

said barrier disc is a molded or fabricated barrier disc.

12. (New) A package according to claim 6 wherein:

said barrier disc is a molded or fabricated barrier disc.

REMARK AS TO THE CLAIMS

Minor corrections of an obvious nature have been made to claims 1, 4, 6, 8 and 10, and claims 11 and 12 are being added by this amendment. The corrections to claims 1, 4, 6, 8 and 10 are believed to be proper and unobjectionable; no new matter is being added.

Claims 1, 4 – 6, 9, and 10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Druitt (U.S. 5,638,972) in view of Montgomery (U.S. 5,785,196). This rejection is respectfully traversed.

To begin with, Montgomery does not, as asserted by the Examiner, teach the presence of "a barrier disc 59 to reduce the diffusion of gas," because Montgomery's element 59 is a "barrier coating." Montgomery's Specification, column 4, lines 44 – 48. This construction does not correspond to the "barrier disc" of this invention because the barrier coating 59 of Montgomery, of necessity, will be limited in its thickness to a thickness that may not perform adequately in resisting gas transmission through it, or to a thickness that is inadequate to incorporate an oxygen-scavenging material embedded therein, as called for by claim 3.

More fundamentally, the barrier coating 59 of Montgomery is not shown as being "retained within the closure assembly against the underside of the top panel by a folded back free end of the sealing fin when the sealing fin is in sealing

engagement with the rim of the container," as required by claim 1, and it is not "contained within the closure assembly, when the closure assembly is in sealing engagement with the container, by a folded back free end of the sealing fin," as required by claim 6. Clearly, from Figs. 8 and 9 of Montgomery, the sealing element 59 of Montgomery is bonded to the underside of the top panel of the closure of such reference, and this feature limits Montgomery's selection of materials (i) either to a material that can be self-adhered to the (unspecified) material from which its closure 22 is formed, or (ii) to a material that can be joined to the underside of the top panel enclosure only by the use of a separate adhesive. Neither of these alternatives is required of the "barrier disc" of Applicants' claims at issue.

Claims 11 and 12 have been added to further specify that the "barrier disc" of Applicants' invention is a "molded or fabricated barrier disc," to emphasis the structural difference between Applicants' "barrier disc" and Montgomery's " barrier coating."

Accordingly, it is respectfully submitted that claims 1, 4 – 6, 9 and 10, together with newly-presented claims 11 and 12, define patentably under 35 U.S.C. §103(a) over any proper combination of the teachings of Druitt and Montgomery, and reconsideration and allowance of each of such claims are, therefore, respectfully requested.

Claims 2, 3, 7 and 8 were rejected under 35 U.S.C. §103(a) as being

unpatentable over Druitt (U.S. 5,638,972) in view of Montgomery (U.S. 5,785,196) as applied to claims 1 and 6, and further in view of Product Data Sheet of Daraform Exp. 5162-65EG (hereinafter "Product Data Sheet"). This rejection is respectfully traversed.

To begin with, it is respectfully submitted that claims 2, 3, 7 and 8 are patentable under 35 U.S.C. §103(a) with their respective parent claims, claims 1 and 6, for the reasons set forth above in support of the patentability of claims 1 and 6. It is also respectfully submitted that claims 2, 3, 7 and 8 are patentable over any proper combination of the teachings of Druitt, Montgomery, and Product Data Sheet independently of the merits of their respective parent claims.

As pointed out above, the use of a "barrier coating" as taught by Montgomery will result in a barrier of limited thickness, and there is no teaching in Montgomery, or Product Data Sheet that the oxygen scavenging material of Product Data Sheet can be successfully incorporated in a "coating" of limited thickness.

Accordingly, it is respectfully submitted that claims 2, 3, 7 and 8 define patentably under 35 U.S.C. §103(a) over any proper combination of the teachings of Druitt, Montgomery and Product Data Sheet, and reconsideration and allowance of each of such claims are, therefore, respectfully requested.

Claims 2 and 7 were rejected under 35 U.S.C. §103(a) as being unpatentable over Druitt (U.S. 5,638,972) in view of Montgomery (U.S. 5,785,196) as applied to

claims 1 and 6, and further in view of Richmond (U.S. 6,095,359). This rejection is respectfully traversed.

To begin with, it is respectfully submitted that claims 2 and 7 are patentable under 35 U.S.C. §103(a) with claims 1 and 6, their respective parent claims, for the reasons set forth above in support of the patentability of claims 1 and 6. It is also respectfully submitted that claim 2 and 7 are patentable independently of the merits of claims 1 and 6.

At the outset, it is believed that an error occurred in the statement of the rejection, in the third full paragraph under numbered paragraph 4, where it is stated "... it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize this material (EVOH) to make the barrier disc of Druitt." In that regard, it is believed that the reference should have been made to "the barrier disc of Montgomery," and the rejection will be analyzed as though it had been so worded.

In regard to the substitution of EVOH for the unspecified material of the barrier disc 59 of Montgomery, one would need to know whether EVOH could be self-adhered to the (unspecified) material of the construction of Montgomery's closure 22, or whether a separate adhesive would be required to effect the bonding of the barrier material to the underside of the top panel of Montgomery. Thus, in view of the uncertainities involved in combining the references applied against

claims 2 and 7 to reject the inventions defined by such claims, the prior art is simply not "enabling" as to the invention of such claims under the standards of Beckman Instruments Inc. v. LKB Produkter AB, 892 F.2d 1547, 13 USPQ 2d 1301, 1304 (Fed.Cir. 1989). In that case the court's stated "[i]n order to render a claimed apparatus or method, obvious, the prior art must enable one skilled in the art to make and use the apparatus or method" citing In re Payne, 606 F.2d.303, 314, 203 USPQ 245, 255 (CCPA 1979). The rejection of claims 2 and 7 under 35 U.S.C. §103(a) as being unpatentable over Druitt in view of Montgomery and further in view of Richmond simply does not meet this enablement test; in that regard, it does not teach how the barrier coating 59 of Montgomery can be mechanically held against the underside of the top panel of the Druitt/Montgomery closure, as is the case of Applicants' closure in which the barrier disc is held against the underside of the closure top panel by the sealing fin.

Accordingly, it is respectfully requested that claims 2 and 7 define patentably under 35 U.S.C. §103(a), and reconsideration and allowance of each of such claims are, therefore, respectfully requested.

Claims 3 and 8 were rejected under 35 U.S.C. §103(a) as being unpatentable over Druitt (U.S. 5,638,972) in view of Montgomery (U.S. 5,785,196) and Richmond (U.S. 6,095,359) as applied to claims 2 and 7, and further in view of Yamada et al. (U.S. 5,143,763). This rejection is respectfully traversed.

To begin with, it is respectfully submitted that claims 3 and 8 are patentable under 35 U.S.C. §103(a) with claims 1 and 6, their respective parent claims, for the reasons set forth above in support of the patentability of claims 1 and 6.

It is further respectfully submitted that claims 3 and 8 are independently patentable under 35 U.S.C. §103(a) with claims 2 and 7, their respective parent claims, for the reasons set forth above in support of the independent patentability of claims 2 and 7.

It is also respectfully submitted that claims 3 and 8 are patentable independently of the merits of claims 2 and 7 for the reason that the tortured reconstruction of the prior art, relying as it does on no less than 4 different references, is a hindsight reconstruction of the prior art that is impermissible under In re Fritch, 972 F.2d 1260, 23 USPQ2d 1780, 1784 (Fed.Cir. 1992), where the court stated "[o]ne cannot use hindsight to pick and choose among isolated disclosure in the prior art to deprecate the claimed invention, citing In re Fine, 837 F.2d 1071 1075, 5 USPQ2d 1596, 1600 (Fed.Cir. 1988).

Accordingly, it is respectfully submitted that claims 3 and 8 are patentable under 35 U.S.C. §103(a) over any proper combination of the teachings of Druitt, Montgomery, Richmond, and Yamada et al., and reconsideration and allowance of such claims are, therefore, respectfully requested.